

An Argument From Experience for the Existence of Natural Law

Law is something most people suppose must be written, either by man, by God, or by some governing body. I would like to show that it is impossible for law to be constructed by any person or body of people. When I say law, here, I mean rules that should justly govern human conduct.

A law is something that a person has a moral obligation to obey. It is distinguished from a mere rule by the moral aspect of which the law is possessed, which is not a necessary characteristic of a rule. A rule can be imposed for the purpose of achieving a desired end, but not necessarily an end which is morally good. At a party, for example, guests may be required to come wearing a certain kind of clothing in order to achieve the end of a desired aesthetic theme at the party. In a game, rules are imposed in order to make the game interesting, challenging and fair. There may be no moral aspect to these rules, but they do serve a purpose.

Law, on the other hand, serves a purpose which is not merely desired by some particular person, but its violation will necessarily result in an undesirable and potentially tragic state of affairs for some person. The end to which a law is aimed is one that is greater than just a coincidental or capricious desire. A rule can be said to be directed to an end that is deemed by some person or group of people to be good. A law is directed to an end that is, in fact, good.

It could be said that this idea of what is, in fact, good is ineffable or, perhaps, illusory. It may be the case that it isn't possible to outline or fully describe what is the good, but, on a practical level, when we need to know whether or not a particular thing is good or not, we usually have little trouble, although there certainly are the difficult exceptions. And when an act is evil, we rarely have trouble recognizing it as such, especially when it is an action taken against us.

All people of sound mind experience some kind of moral obligation. It has been said that, in

a state of nature, we are all incorrigible murderous, lying thieves who would pluck out the eyeballs of one another if not for wise hand of omniscient, almighty government. The argument often goes: "Oh yes, I would always do what's right, but we need strong, central control to restrain everyone else." Or: "Oh yes, in our society, we know right from wrong, but that's only because we have been conditioned to believe that stealing and killing are wrong, by government." But these are nothing more than baseless assertions, and that they are nothing more than that will become crystal clear once we discuss the difference between something that is not evil and a justifiable evil. The fact is that any adult who is of sound mind, that is to say mature, not ill, and capable of experiencing empathy, is capable of recognizing justice and injustice when it is seen. We all know of this natural law, whether on a conscious or unconscious level, and whether we know that we know it or not, and we act on the knowledge. We appeal to the counsel of friends when we are involved in a dispute; we appoint juries, as a matter of practice, as the ultimate decision makers when we need to know if crime has been committed.

There is a sense in which law is immutable, a sense in which it does not, and cannot change. Murder, for example, has always been understood as an evil. There isn't now, nor has there ever been a society in which murder was not understood as an evil. It's unlikely that there will ever be a society in which murder is understood as anything other than an evil. One might object to this by pointing to the old societies that practiced human sacrifice. This, however, would be to ignore the whole concept of a sacrifice. It is the giving up of something that is precious. The old Sumerian societies that practiced child sacrifice did it because they believed that for them to experience the evil of giving up children of their own was to please their god and bring favor on them or their society. The old Aztec societies that would hold a ball game and sacrifice one of their own at the end, they would sacrifice the winner precisely because he was superior to the loser. They didn't reason that, if you're good at this game you must be evil, and, therefore, it is right for us to kill you. The reasoning was that, only if you can win at this game, can we know that you are good enough to be given up for the pleasure of the god. It was the suffering brought on the victim and on the society that qualified the act as a worthy sacrifice. They knew killing was evil. Without that knowledge, the sacrifice could have carried no weight in their minds.

Theft, also, is and has always been understood as a crime. It has been said that there have been societies without a concept of ownership, but this is not true. You'll never meet a person who does not believe that his body belongs to him. The presence of possessive personal pronouns, such as "mine", "his", "hers", "theirs" in even the oldest of written languages indicates that the concept of ownership is not new, or even relatively new, among people, or unique to any particular society. And the taking of property without the voluntarily given

permission of the owner has always been understood as something that is wrong. I would like to defy anyone to show evidence of a society where taking something that belongs to another by force, deception or stealth was seen as acceptable behavior. It seems to be the case that, wherever two or more people are present, some understanding of morality is also present, not that people always treat one another properly, but that there is a knowable proper way to treat one another.

Consider children for a moment, and the stories we read to them. These stories often feature a villain. The villain is almost never explicitly identified as the villain in these stories. That is that the stories don't come out and say "Cain is the bad guy in this story" and then give a comprehensive definition of "bad". But children don't seem to have any problem identifying the villain as the villain by his actions in the story. The villain often lies, cheats, steals and kills, and sometimes the villain is just mean, arrogant, in some way misanthropic, and, by virtue of these kinds of actions, is recognized, by even the youngest children who understand the story, as the villain and, in most cases, is detested by them. How could this possibly be due to mere conditioning? They have never experienced the scenarios discussed in all those stories, yet they have no trouble distinguishing the bad guy from the good guy by their respective actions.

Even babies who cannot yet speak tend to show favor to other people or anthropomorphic representations of people, such as stuffed animals, who are nicer to others. There was a study done, where a little puppet play, wherein stuffed animals are used as puppets, is shown to babies who are old enough to sit up and watch, but not yet old enough to talk, so somewhere between a couple of months and about a year. One puppet is trying to open a box and made to look as if it finds the task of opening the box very difficult. A second puppet appears and jumps on the lid of the box, making the first puppet's task more difficult. A third puppet appears, and assists the first puppet in opening the box. After the show, the second and third puppet are offered to the baby. Ninety percent of the time, the baby will reach for the third (the nicer) puppet. Many of the babies in the study even recoiled from the second (the mean) puppet. Mind you that the puppets had not interacted with the babies in the study in any way before they were presented to the baby after the play. The reaction the babies had to the puppets could only have been due to the way the two puppets had treated the first puppet in the play.

This shows that a sense of right and wrong is not just a result of environmental conditioning, but that it is instinctive. There are things, that we could do to others, that we perceive intuitively are wrong. The wrongness of some acts is something we experience. If you imagine just walking up and giving someone an unprovoked slap, you also experience the

wrongness, the badness of such an act. There has never been a culture wherein things like torture, murder, rape, or robbery were seen as good and acceptable things.

So the difference between a rule and a law is mutability. A law can never change. Like physical law, moral law is the same for everyone, everywhere, at all times. The only difference between physical law and moral law is that moral law can be violated. A rule, on the other hand, can be as capricious as any preference, rules are not the same for all people at all times, and tend to be very different from one culture to the next.

When a law is violated, negative consequences are inevitable as a result of it's having been violated. There is always a victim who suffers as a result of the violation of a law. The violator of a law may escape punishment, or any other negative consequences of having violated a law, but it is nearly impossible for a law to be violated by an adult of sound mind without that adult knowing he has violated it. A rule, such as one requiring anyone who passes through some doorway to remove her shoes or pay a fine to the owner of the doorway could be violated by just about anyone without the violator knowing anything of the rule. But a law, such as one requiring that people refrain from stealing from one another can hardly be violated without the thief knowing that he has got something he shouldn't have.

Take a more subtle situation as an example. The doorway through which one must remove his shoes before passing through: Imagine a pristine white carpet covering the floor on the other side, and a man wearing mud caked boots walking right on through and being met by the mistress of the house. Would you expect him to be surprised when she loudly and vehemently demands that he get his muddy damned boots off the carpet? Is her indignation not justified? Would he be justified in doing anything other than carefully removing his boots, apologizing, and cleaning the carpet, or paying to have it cleaned, or buying a new one? Anyone with any sense knows that he has violated some law. He has damaged her property. He must pay. He has violated something other than just a rule. What he has done cannot properly be compared with wearing white socks with a tuxedo, or saying "a apple", or failing to pay for protection that he didn't ask for and does not want.

So the difference between a rule and a law is the victim. Violation of a law results in a suffering victim, and the violation of a mere rule, that is a rule which is not also a law, does not.

So natural law is the ever present moral imperative which compels one to honor the sovereignty that all other people enjoy over their own person and property. Natural law is known by all rational adults. There's no need to discuss its source here. We can leave that to other philosophers. What we do need to know is that it is real. No rational adult would deny that it is wrong to murder another person, or to rob another person. To do so would be to betray one's own psychopathy. No rational adult would deny that it is wrong to take something, by force or by stealth, from another person. Even something so subtle as to take another person's place in a line is understood by all rational adults, in every culture, to be wrong. To do these things is not a mere failure. Murder, theft, robbery, rape, torture, fraud, these things are understood as violations of what we know to be law. Laws against these things no more need to be written than do laws requiring us to breathe and eat. Law must be enforced. But the idea that it must be written in order for it to be known is as absurd as the idea that we must be told not to sleep in fire.

To say that something is justified is to say that it is made right, or made just. If we presume that something can be made right, we must presuppose that it is something that is, otherwise, wrong, that it's null, or default state is that of being wrong. Something cannot be made right if it is already right. Something that is morally neutral, like preferring eggs and toast to cereal in the morning, cannot be made right or wrong. We don't try to justify the act of feeding hungry children because it is already right and just. The only kind of things that it makes any sense to speak of in terms of justifiability are things that have an intrinsic quality of being wrong. The fact that we understand the concept of justification is evidence that we all, on some level or another, understand that some things are inherently wrong.

When someone does something that that person knows to be wrong, that person will tend to either admit that the thing is wrong or try to justify it. When a man beats the crap out of another man, you can imagine what it is that he usually says afterward. "I told him [not to do x, y or z]. He is attempting to justify the act that he knows to be inherently wrong. If he didn't believe that beating the crap out of someone is wrong, it would never occur to him to try to justify it, to himself, or to anyone else. When a woman starts a rumor about another woman that she knows to be untrue, you can imagine what she usually says about it. "Well, she's a bitch anyway. She had it coming." Again, if she didn't believe that lying about someone is wrong, it would never occur to her to try to justify the act. Whether these justifications are sound or not is another matter, one for courts or judges to decide. Here, we are only concerned

with understanding the distinction between something that is not wrong and something that is justified, and with the fact that our understanding of the concept of justification betrays our understanding of the intrinsic wrongness that characterizes some acts.

If we examine ourselves, we can discern knowledge of things that are wrong. If we imagine ourselves killing someone, we experience a sense of wrongness in the act. If we think back to some of the things we have done to wrong others, we experience remorse. This is all due to empathy. This is one of the most common and most powerful ways to experience natural law. Empathy is an emotion over which we have no control. We are born with the capacity to experience it. There are some people who cannot experience empathy. These are an extreme minority. Psychopaths cannot experience empathy. The fact, however, that there are some people who are defective and unable to experience empathy, and thus experience natural law in it's fullest, should not lead us to disregard our own experience or the experience of the overwhelming majority of people, and conclude that there is no experience of natural law or that the experience is sufficiently subjective so as to not be regarded as law. This is to say that we should not allow the rule to be dictated, or even marginalized, by the exception. We would be more rational to assign the status of law to what we experience as law.

Another way to experience natural law is by applying the golden rule. That we should only do unto others as we would have others do unto us is just a maxim, or a command, until we start to think of what we do not want others to do to us. When we do this, some things that we do not want others to do to us become obvious. It is undeniable that I would not like to be beaten, robbed, killed, or even lied to. There are exceptions to even this. One man answered an add in a newspaper, placed by another man who was looking for someone to kill and eat. The first man decided that he would like to be killed and eaten. They got together, and the man who placed the add killed and ate the man who answered it. Is it wise, prudent, rational, to allow such exceptions to have any bearing on law? To answer that, I appeal to my experience, your experience, and the experience of the overwhelming majority of people. We should regard such exceptions as defective aberrations, and regard our experience of law as law.

If we appeal to the mean of human experience to codify, or articulate the natural law, we can come up with a simple statement which affirms it. It will be a statement about what we should not do to others. It could not be a statement about what we should do to others because that would imply positive obligation, and, while we can, other than some rare and most likely defective exceptions, all agree about what people should not do to others, we

cannot come anywhere near all agreeing on what we have an obligation to do to others, with the possible exception of a parents' obligation to care for their children. But if we consider the possibility of an implicit contract between parent and child, we may find that, even that, is not an exception.

This is a statement of natural law: No person may initiate force or fraud, or initiate a threat of force, against any other person or against the property of any other person.

Another statement of natural law: Every person is the owner of his or her own body, and the owner of the fruits of his or her labor, insofar as his or her labor is not spent in violation of this statement or the statement called "This is a statement of natural law".

If the two statements above are enforced as the only law in a society, what harmful thing could one person possibly do to another that would not be punishable under one or both of those statements? What just complaint could anyone have against a person who never violates either of those two statements? There are none. If one believes that one can think of an exception, I can show that one why the supposed exception is not an exception. If those two statements were enforce as law, and the only law, other than case law built from those two statements alone, the society in which this were the case would be more civil than that same society could possibly be under any other system of governance.

Since law is understood by all, what is legislation? Why do some people propose to write rules, and call them law? Do they suppose that people can't perceive law? Why then, should they suppose that they can? Is it that they find natural law insufficient? Once we consider the fact that, among the first legislation to be written for any society involve a requirement to give money to the ones who write the legislation, we should suppose that they must find natural law insufficient. Is there some natural moral principal that would require every one or most people in a society to routinely give some portion of their earnings to one person, or one group of people? Surly not.

Legislation has been defended by enough philosophers for its supposed necessity. It has been asserted that, without it, lawlessness would prevail and all would suffer as a result. This is

where I will part with the common wisdom, because the common wisdom, here, is tragically flawed. If it is the case that, in the absence of legislation, people cannot do what is right, then the first piece of legislation could never be right. If the first piece of legislation is right, then it must not be the case that, in the absence of legislation, people should be expected to do wrong.

How can just legislation come about unless people, by and large, understand and favor justice? Who can write just legislation? Anyone? Everyone? Certain wise ones? If it is only certain wise people who are capable of writing just legislation, how can we be sure that those people do, in fact, write it? By a vote? But is it everyone who can recognize who these certain wise people are? If so, then why suppose that everyone is not wise enough to write the legislation themselves? Are we to believe that only certain wise ones among us are qualified to write legislation and that they will necessarily emerge and write it for us, or that we are all qualified to select the proper legislators, yet unqualified to write it ourselves? If we are qualified to write our own legislation, then what need is there for it to be written?

What are we doing, then, when we write legislation? Are we making law? If the law is something that ought to be enforced, then it can't be something that we can make. For that to be possible it would need to be the case that it is possible for us to bring about moral obligation by fiat. Moral obligation, however, seems to be something we recognize, not something we can create on a whim. Surely we can all imagine legislation that does not create a moral obligation. Does legislation requiring strangers to apprehend a suspected slave impose some moral obligation on those strangers? Law, if the concept of law is to have any meaning, cannot be the same as legislation. Legislation has more in common with a rule than with a law.

Since natural law is sufficient for maintaining peace and order in any society, the purpose of legislation must be to enforce, as if they were law, the rules or desires of one person or group. Since such rules are not law, there is no good reason to believe that those rules will always be in accord with law. If they were always to be in accord with law, there would be no need for them. Since the authors of legislation seek to establish the legitimacy of legislation in the good, the right, that is, real law they must know that real law, that is, natural law is sufficient to establish the legitimacy of legislation, they must also understand that natural law is sufficient to establish the legitimacy of anything that is good. And so, they must understand that all legislation is superfluous. Yet they persist with it.

They must also know that to enforce something other than law as law must confuse and confound what law in fact is. Yet they persist with legislation.

If law is enforced, order and peace will abound. If something other than law is enforced, something other than order and peace will abound. It must be the case, then, that those who enforce something other than law prefer that something other than order and peace abound. The fact that enforcing something other than law serves to confuse and confound what law is must be a convenient fact for anyone who seeks to advance something other than order and peace.